

**REMARKS**

This Application has been carefully reviewed in light of the decision of the Board Of Patent Appeals and Interferences ("Board") dated April 28, 2004. Claims 1-12, 14-32, and 34-105 were pending in the Application. The Board reversed the Examiner's rejection of Claims 1-12, 14-32, 34-90, 94, and 95 under 35 U.S.C. §112, first paragraph, and sustained the Examiner's rejection of Claims 1-12, 14-32, and 34-105 under 35 U.S.C. §§102 and 103.

Applicants respectfully request reconsideration and favorable action in this case.

**Reduction to Practice Prior to Kikinis's Effective Date**

The Board held the previously filed declaration as insufficient to show conception of the invention prior to the effective date of U.S. Patent No. 6,201,804, which issued to Kikinis ("*Kikinis*"), and diligence from prior to the effective date of *Kikinis* to the filing of this Application. Applicants submit herewith a new declaration and exhibit establishing a date of reduction to practice prior to February 17, 1998, the effective date of *Kikinis*. Therefore, Applicants respectfully submit that *Kikinis*, may not, alone or in combination, be used to support rejections of any of the pending Claims in the Application.

**Claim Rejections - 35 U.S.C. §102**

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 91, 93, 98, 99, 101, 102, 104, and 105 under 35 U.S.C. §102(e) as anticipated by *Kikinis*. Applicants submit the attached declaration establishing a date of reduction to practice prior to February 17, 1998, the effective date of *Kikinis*. Therefore, Applicants respectfully submit that *Kikinis*, may not, alone or in combination, be used to support rejections of any of the pending Claims in the Application. Thus, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 91, 93, 98, 99, 101, 102, 104, and 105.

**Claim Rejections - 35 U.S.C. §103**

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 1-6, 9, 11, 12, 14-26, 29, 31, 32, 34-47, 50-62, 65-73, 75-78, and 80-90 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,726,984, which issued to

Kubler, et al. ("*Kubler*") in view of *Kikinis*. Applicants submit that *Kubler* alone fails to disclose each and every element of any of the pending Claims and that, in light of the attached Declaration, *Kubler* may not be combined with *Kikinis*. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 1-6, 9, 11, 12, 14-26, 29, 31, 32, 34-47, 50-62, 65-73, 75-78, and 80-90.

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 41-46, 50-54, 56-61, 65-69, 71-73, 75-78, and 80-90 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,605,737, which issued to Iwami, et al. ("*Iwami*") in view of *Kikinis*. Applicants submit that *Iwami* alone fails to disclose each and every element of any of the pending Claims and that, in light of the attached Declaration, *Iwami* may not be combined with *Kikinis*. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 41-46, 50-54, 56-61, 65-69, 71-73, 75-78, and 80-90.

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 10 and 30 under 35 U.S.C. §103(a) as unpatentable over *Kubler* in view of *Kikinis*, as applied to Claim 1 above, and further in view of U.S. Patent No. 5,724,355, which issued to Bruno, et al. ("*Bruno*"). Applicants submit that neither *Kubler* nor *Bruno*, alone or in combination, disclose each and every element of any of the pending Claims. Moreover, in light of the attached Declaration, *Kubler* and *Bruno* may not be combined with *Kikinis*. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 10 and 30.

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 74 and 79 under 35 U.S.C. §103(a) as unpatentable over *Kubler* in view of *Kikinis*. Applicants submit that *Kubler* alone fails to disclose each and every element of any of the pending Claims and that, in light of the attached Declaration, *Kubler* may not be combined with *Kikinis*. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 74 and 79.

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 7, 8, 27, 28, 48, 49, 63, and 64 under 35 U.S.C. §103(a) as unpatentable over *Kubler* in view of *Kikinis*, as applied to Claim 1 above, and further in view of U.S. Patent No. 5,732,078, which issued to Arango ("*Arango*"). Applicants submit that neither

*Kubler* nor *Arango*, alone or in combination, disclose each and every element of any of the pending Claims. Moreover, in light of the attached Declaration, *Kubler* and *Arango* may not be combined with *Kikinis*. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 7, 8, 27, 28, 48, 49, 63, and 64.

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 1-6, 9, 11, 12, 14-26, 29, 31, 32, 34-40, 47, 55, 62, and 70 under 35 U.S.C. §103(a) as unpatentable over *Iwami* in view of *Kikinis*. Applicants submit that *Iwami* alone fails to disclose each and every element of any of the pending Claims and that, in light of the attached Declaration, *Iwami* may not be combined with *Kikinis*. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 1-6, 9, 11, 12, 14-26, 29, 31, 32, 34-40, 47, 55, 62, and 70.

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 92, 94-97, 100, and 103 under 35 U.S.C. §103(a) as unpatentable over *Kikinis*. In light of the attached Declaration, Applicants respectfully submit that *Kikinis* may not, alone or in combination, bar the patentability of any of the pending Claims. Thus Applicants respectfully request the withdrawal of the rejection of Claims 92, 94-97, 100, and 103.

Without addressing the merits of the rejection, the Board sustained the Examiner's rejection of Claims 96, 97, and 103 under 35 U.S.C. §103(a) as unpatentable over *Kikinis*, as applied to Claim 91 above, and further in view of *Bruno*. Applicants submit that *Bruno* alone fails to disclose each and every element of any of the pending Claims and that, in light of the attached Declaration, *Bruno* may not be combined with *Kikinis*. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 96, 97, and 103.

**Conclusions**

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

A check in the amount of \$770.00 is attached to cover the RCE filing fee. No other fees are believed to be due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants



Kurt M. Pankratz  
Reg. No. 46,977

Date: June 21, 2004

**CORRESPONDENCE ADDRESS:**

Customer Number:

**05073**